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Attorneys for Defendants
WACHOVIA SECURITIES, LLC and MARK WIELAND

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

VIOLETTA ETTARE,) Case No. C-07-04429-JW (PVT)
Plaintiff,)
vs.) **DECLARATION OF TERRY ROSS IN**
JOSEPH E. BARATTA, an individual,) **SUPPORT OF AMENDED NOTICE OF**
TBIG FINANCIAL SERVICES, INC., form) **REMOVAL OF ACTION**
of business unknown, WACHOVIA)
SECURITIES, LLC, a Delaware Limited) Date: Monday, December 3, 2007
Liability Company, MARK WIELAND, an) Time: 9:00 a.m.
individual, and DOES 1-25,) Place: Courtroom 8, 4th Floor
Defendants.)
)

I, TERRY ROSS, declare as follows:

23 1. I am an attorney at law duly licensed to practice before this Court
24 and am a member of the law firm of Keesal, Young & Logan, attorneys of record for
25 Defendants WACHOVIA SECURITIES, LLC (“Wachovia”) and MARK WIELAND
26 (“Wieland”) (collectively, “Defendants”) in this matter. I have personal knowledge of the
27 facts set forth below except for those stated upon information and belief and, if called
28 upon to testify as a witness, could and would testify competently thereto.

1 2. On July 26, 2007, Wachovia was served with the Summons and a
 2 copy of the Complaint filed by Plaintiff Dr. VIOLETTA ETTARE on July 13, 2007, in the
 3 Superior Court of the State of California for the County of Santa Clara, Case
 4 No. 107CV089814, entitled VIOLETTA ETTARE v. JOSEPH E. BARATTA, an indi-
 5 vidual, TBIG FINANCIAL SERVICES, INC., a form of business unknown, WACHOVIA
 6 SECURITIES, LLC, a Delaware Limited Liability Company, MARK WIELAND, an
 7 individual, and DOES 1-25 (the "Complaint"). A true and correct copy of the Proof of
 8 Service of Summons on Wachovia is attached hereto as Exhibit A. A true and correct
 9 copy of the Summons and Complaint is attached hereto as Exhibit B.

10 3. On August 1, 2007, Weiland was served with the Summons and a
 11 copy of the Complaint. A true and correct copy of the Proof of Service of Summons on
 12 Wieland is attached hereto as Exhibit C.

13 4. Based on discussions I have had with Gilbert R. Serota, counsel for
 14 Defendants TBIG FINANCIAL SERVICES, INC. ("TBIG") and JOSEPH E. BARATTA
 15 ("Baratta"), I am informed and believe TBIG and Baratta were both served with the
 16 Summons and a copy of the Complaint on August 3, 2007.

17 5. I am informed and believe Wachovia is a limited liability company
 18 under the laws of Delaware, having its principal place of business in Richmond, Virginia.

19 6. I am informed and believe Wieland is a citizen of the State of
 20 Pennsylvania.

21 7. Based on discussions I have had with counsel for TBIG and Baratta,
 22 I am informed and believe TBIG is a corporation incorporated under the laws of Nevada,
 23 having its principal place of business in Incline Village, Nevada and that Baratta is a
 24 citizen of the State of Nevada.

25 8. Based on a review of the Complaint, I am informed and believe
 26 Plaintiff was at all material times a citizen of the State of California and a resident
 27 Santa Clara County. See Complaint ¶ 1.

28 ///

9. Based on a review of the Complaint, I am informed and believe that Plaintiff's alleged damages exceed \$75,000. See, e.g., Complaint ¶ 39.

10. No further proceedings have been had in the above-referenced state court action.

11. Defendants' original Notice of Removal (in which TBIG and Baratta joined) was filed on August 27, 2007.

12. Defendants provided the original Notice of Removal to the Clerk of the Superior Court of the State of California for the County of Santa Clara on August 27, 2007. A true and correct copy of that Notice is attached hereto as Exhibit D.

13. As counsel for Defendants Wachovia and Wieland, I will provide the Amended Notice of Removal to the Clerk of the Superior Court of the State of California for the County of Santa Clara once this Court has granted Defendants leave to amend their Notice of Removal.

Executed this 29th day of October, 2007 at Long Beach, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.)

TERRY ROSS

STEPHEN S. WU (SBN 20509)
COOKE KOBRECK & WU LLP
177 Bovet Road, Suite 600
San Mateo, CA 94402
Telephone: 650-638-2370
Attorney for: Plaintiff

FOR COURT USE ONLY

FILED

AUG 13 2007

WIFI TORRE
Chief Executive Officer/Clark
Shane, Torre & Clark, County of Santa Clara
BY DEPUTY

Q. FUJIHARA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

Plaintiff : VIOLETTA ETTARE

Defendant : JOSEPH E. BARATTA etc., et al.

Ref#: 218852 PROOF OF SERVICE OF SUMMONS

Case No.: 107CV089814

1. At the time of service I was at least eighteen years of age and not a party to this action.
2. I served copies of:
SUMMONS; COMPLAINT; CIVIL CASE COVER SHEET; CIVIL LAWSUIT NOTICE; ADR INFORMATION SHEET
3. a. Party served : WACHOVIA SECURITIES LLC

b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made:
Rhonda McCarty, Authorized Agent
4. Address where the party was served:
CSC-Lawyers Incorporating Service
2730 Gateway Oaks Drive #100
Sacramento, CA 95833
5. I served the party
a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: July 26, 2007 (2) at: 1:06 PM

PROOF OF SERVICE OF SUMMONS

EXHIBIT "A"

*** PAGE 20 OF 32 ***

6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of: WACHOVIA SECURITIES LLC
under the following Code of Civil Procedure section:
under: other: Limited Liability Company

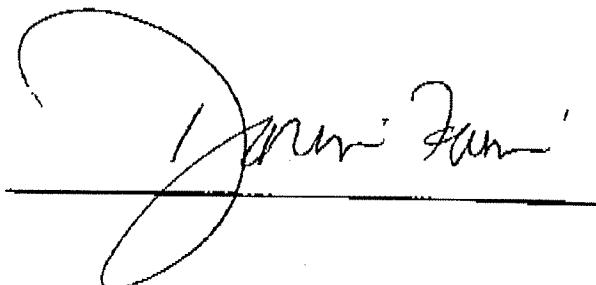
7. Person who served papers:

- a. DARIN FAIN
- b. SPECIALIZED LEGAL SERVICES, INC.
1112 Bryant Street, Suite 200
San Francisco, CA 94103
- c. Telephone number: (415) 357-0500
- d. The fee for service was: \$120.00
- e. I am:
(3) a registered California process server:
(i) owner, employee or independent contractor
(ii) Registration no.: 2006-45
(iii) County: Sacramento

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 26, 2007

DARIN FAIN



PROOF OF SERVICE OF SUMMONS

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

JOSEPH E. BARATTA, TBIG FINANCIAL SERVICES, INC.,
WACHOVIA SECURITIES LLC, MARK WIELAND and DOES 1
through 25

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
VIOLETTA ETTARE

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)ENDORSED
FILED

2007 JUL 17 A 7:54

KELLOGG, COTT & CO., THE SUPERIOR COURT
COUNTY OF SANTA CLARA CALIFORNIA
BY: DEPUTY CLERK FUJIWARA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/seithelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/seithelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):
Santa Clara County Superior Court

191 N. First Street

San Jose, CA 95113

CASE NUMBER:
(Número del Caso): 107CV089814

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Christopher Cooke and Stephen Wu, COOKE KOBRECK & WU LLP

177 Bovet Rd., Suite 600, San Mateo, CA 94402, Tel. No. (650) 638-2370

DATE:
(Fecha) **JUL 17 2007**

Kiri Tome

Clerk, by _____ Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de este citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **Wachovia Securities LLC**

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)

4. other (specify): **limited liability company**

Page 1 of 1

1 CHRISTOPHER C. COOKE, ESQ. (#142342)
2 STEPHEN S. WU, ESQ. (#205091)
3 **COOKE KOBRECK & WU LLP**
4 177 Bovet Road, Suite 600
5 San Mateo, CA 94402
6 Telephone: (650) 638-2370
7 Facsimile: (650) 341-1395

8 Attorneys for Plaintiff VIOLETTA ETTARE

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA - UNLIMITED CIVIL JURISDICTION

12 VIOLETTA ETTARE,

13 Plaintiff,

14 v.

15 JOSEPH E. BARATTA, an individual, TBIG
16 FINANCIAL SERVICES, INC., form of
17 business unknown, WACHOVIA SECURITIES,
18 LLC, a Delaware Limited Liability Company,
19 MARK WIELAND, an individual, and DOES 1-
20 25,

21 Defendants.

22 **107CV089814**

23 CASE NO.:
(Unlimited Civil)

24 **COMPLAINT FOR:**

- 25 1) Fraud
- 2) Breach of Fiduciary Duty
- 3) Breach of Oral Contract
- 4) Negligence
- 5) Securities Fraud [Violations of Corp.
Code 25,400]
- 6) Unfair Business Practices [Violation of
California Business & Professions Code
§ 17200 et seq.]

27 Plaintiff VIOLETTA ETTARE alleges as follows:

28 1. At all times relevant to this Complaint, Plaintiff has been a resident of Morgan Hill,
Santa Clara County, California.

2. Defendant Joseph E. Baratta ("BARATTA"), at all times relevant herein, has resided
in the Town of Los Altos Hills, Santa Clara County, California and in Incline Village, Nevada.

3. Plaintiff is informed and believes that Defendant TBIG Financial Services, Inc.
("TBIG") at all relevant times, has been an investment advisory firm, registered with the United
States Securities & Exchange Commission, operating from BARATTA's residences in Los Altos
Hills, Santa Clara County, California and Incline Village, Nevada. TBIG was, until 1998, a

California Corporation; its present form of business organization is unknown

4. Plaintiff is informed and believes that Defendant Wachovia Securities LLC, ("WACHOVIA") is Delaware Limited Liability Company that maintains its headquarters in Richmond, Virginia. WACHOVIA is securities brokerage firm registered with the United States Securities & Exchange Commission and the National Association of Securities Dealers, Inc. ("NASD"), and is a member of the New York Stock Exchange.

5. Plaintiff is informed and believes that defendant Mark Wieland ("WIELAND"), at all relevant times, has been a resident of Pennsylvania and, until some date in 2007, was the registered representative (i.e. "stock broker") employed by WACHOVIA who oversaw Plaintiff's account at WACHOVIA.

6. Defendants DOES 1 through 25, inclusive, are sued herein by such fictitious names in that Plaintiff does not at this time know their true names, capacities, nor specific activities of said Defendants, but alleges that each of said Defendants is or may be legally liable to Plaintiff, and therefore Plaintiff prays that the true names, capacities and activities of these Defendants may be inscribed herein when the same is ascertained.

7. Plaintiff is informed and believe and thrccon allege that at all times herein mentioned, each Defendant was an agent, servant, franchisee, joint venturer, partner, employee, and/or co-conspirator of the other Defendants herein named, and at all said times, each of said Defendants was acting within the course and scope of said agency, service, franchise, joint venture, partnership, employment and/or conspiracy.

GENERAL ALLEGATIONS

8. Plaintiff is a widow whose husband died in 2001. When her husband died, Plaintiff received \$1 million death benefit from a life insurance policy that her husband had purchased and which named her as the beneficiary.

9. Defendant BARATTA is a relative of a close personal friend of Plaintiff, and through that relative, BARATTA met Plaintiff and socialized with her and her husband before her husband died. BARATTA held himself out to Plaintiff as an expert on securities and investments, and presented himself as a highly successful money manager.

1 10. After BARATTA learned that Plaintiff was to receive substantial life insurance
2 proceeds from the death of her husband, BARATTA repeatedly sought to have Plaintiff invest this
3 money with his firm, TBIG, an investment advisory firm.

4 11. Plaintiff was initially reluctant to invest with TBIG and BARATTA. Plaintiff is an
5 unsophisticated investor and is unfamiliar with the stock market, securities, or investment matters.
6 Defendant BARATTA, however, repeatedly assured Plaintiff that he could obtain a much better
7 rate of return for her than what her funds would earn at a bank (where Plaintiff had intended to hold
8 the insurance proceeds), because of BARATTA's expertise and success in investing in the stock
9 market for other clients.

10 12. In or about November 2001, Plaintiff agreed to become a client of TBIG and
11 BARATTA and transferred \$900,000 to a stock brokerage account that BARATTA had opened in
12 Plaintiff's name at FIRST UNION SECURITIES INC. ("FIRST UNION"), a stock brokerage firm
13 that became WACHOVIA during 2001, following a corporate merger. The stock broker on
14 Plaintiff's account when it was opened at FIRST UNION was WIELAND, who continued as
15 Plaintiff's stock broker after the merger.

16 13. Due to Plaintiff's lack of familiarity with the securities markets, her other limited
17 financial resources, and her aversion to risk, she explicitly instructed BARATTA and TBIG that
18 they should invest no more than \$100,000 of Plaintiff's funds (11 percent) in the stock market and
19 that the rest of her funds should be invested in safe, low risk investments that would preserve
20 capital and provide her with a moderate return.

21 A. Defendants' Unsuitable and Highly Speculative Investment Purchases

22 14. Contrary to Plaintiff's instructions, and without her knowledge or consent,
23 defendants TBIG and BARATTA, with the knowledge and assistance of WACHOVIA and
24 WIELAND, used Plaintiff's funds to purchase and sell millions of dollars of highly risky,
25 speculative securities that were unsuitable for Plaintiff, in light of her stated investment objectives,
26 financial situation, and ability to tolerate financial risk.

27 15. Among other speculative and unsuitable trades, BARATTA and TBIG, with
28 assistance of WACHOVIA and WIELAND, caused Plaintiff's account to:

- 1 a. take significant short positions in volatile technology securities, which exposed
2 Plaintiff's account to risk of loss if the price of the securities increased¹
- 3 b. purchase short-term "call" or "put" option contracts in securities, which exposed
4 Plaintiff's account to market risk with the respect to the security for which the
5 option contract was written, and to the risk of loss of the entire investment in the
6 option contract, in the event that the security for which the option contract was
7 issued declined in price (for the call options) or rose in price (for the put options)
8 and/or if the option contract was not exercised or sold prior to the contract's
9 expiration date.²
- 10 c. take short positions in put and call options, which exposed the account to the risk
11 of loss if the price of the security for which the option contract was issued
12 declined in price (for the short put option positions) or rose in price (for the short
13 call option positions).

14 16. Defendants compounded the risk to Plaintiff's investments and magnified the losses
15 that she suffered by opening a margin account for Plaintiff with WACHOVIA, and using funds
16 borrowed from WACHOVIA through this margin account in order to effect many of these trades.
17 By using borrowed funds to effect these trades, Defendants TBIG and BARATTA caused
18 Plaintiff's account to take larger positions in the stocks and options than the cash position in her
19 account would have permitted, and thereby risked a larger financial loss to Plaintiff if the trades
20 made with these borrowed funds turned out to be unprofitable. The margin debt that Defendants
21 caused Plaintiff's account to incur further drained Plaintiff's account due to substantial interest
22 charges on the funds borrowed from WACHOVIA.

23 17. In addition, Defendants TBIG and BARATTA allowed options contracts in
24 Plaintiff's account to expire without selling or exercising them prior to option contract's expiration

25 ¹A "short position" is a sale of a security by an account holder who does not own the
26 security; the account holder "borrows" the security and is essentially making a bet that the price
27 will decline by the time he or she must repay the "loan" by purchasing the underlying security that
he or she sold "short").

28 ²An option contract is the right to buy or sell a security at a specified price, for a certain
period of time. A "call" option is the right to buy the security at a specified price; a "put" option is
the right to sell the security at a specified price.

1 date, and thereby caused Plaintiff to lose her entire investment in these option contracts.

2 18. Moreover, Defendants TBIG and BARATTA consistently exceeded Plaintiff's
3 instructions not to invest more than \$100,000 of her funds in the stock market, and thereby
4 subjected her investment account to much greater risk inherent in investing in the stock market than
5 Plaintiff was willing to assume.

6 19. Although the exact date in which defendants TBIG and BARATTA began making
7 these improper and unsuitable investments for Plaintiff is not known to Plaintiff, Defendants'
8 highly improper and unsuitable investments occurred throughout 2005 and 2006.

9 B. Defendants' Churning of Plaintiff's Portfolio

10 20. In addition to making unsuitable investments for Plaintiff and exceeding plaintiff's
11 express directions not to invest more than \$100,000 of her account in the stock market, Defendants
12 TBIG and BARATTA, with the assistance and knowledge of WACHOVIA and WIELAND, also
13 "churned" the stocks and options positions in Plaintiff's account during 2005 and continued this
14 improper practice during 2006.

15 21. "Churning" is the practice of excessively trading securities in an investment account,
16 often for the purpose of generating commissions for the stock broker and firm who execute the
17 trades. It is considered a form of securities fraud under federal and state laws applicable to stock
18 brokers and investment advisers (such as Defendants).

19 22. During 2005, for example, TBIG and BARATTA, with the knowledge and
20 assistance of WACHOVIA and WIELAND, caused Plaintiff's account to purchase over \$4 million
21 in securities, and to sell over \$4.3 million in securities. During 2006, TBIG and BARATTA, with
22 the knowledge and assistance of WACHOVIA and WIELAND, caused Plaintiff's account to
23 purchase over \$3.2 million in securities and to sell over \$3.6 million in securities.

24 23. Although TBIG and BARATTA have not admitted to Plaintiff why they "churned"
25 her account, Plaintiff is informed and believes, based upon the commission rates that WACHOVIA
26 charged Plaintiff for the trades in her account, that TBIG and BARATTA were receiving substantial
27 "soft dollars" from WACHOVIA as a result of the trading in Plaintiff's account, and were
28 motivated to place these trades to obtain such soft dollars from WACHOVIA. WIELAND and

1 WACHOVIA, by contrast, profited enormously from TBIG and BARATTA's churning of
2 Plaintiff's accounts due to the commissions they received from the many trades that they executed
3 in the account.

4 24. "Soft dollars" are credits that an investment adviser (such as TBIG) receives from
5 stock brokerage firms (such as WACHOVIA) as a result of securities trades that the investment
6 adviser places through the stock brokerage firms. "Soft dollars" can be used by the investment
7 adviser, in lieu of cash, to pay for many services that the investment adviser wishes for its business.
8 The SEC requires registered investment advisers to disclose their policies on, and receipt of, soft
9 dollars to their clients. Despite these requirements, TBIG and BARATTA never disclosed to
10 Plaintiff whether they received soft dollars from WACHOVIA.

11 25. Plaintiff is informed and believes, based on information she learned only this month,
12 that WACHOVIA had reviewed TBIG's and BARATTA's investment advisory accounts during
13 2002, and had placed restrictions TBIG's and BARATTA's ability to trade their investment adviser
14 clients' accounts. WACHOVIA had discovered that TBIG and BARATTA had "churned" another
15 WACHOVIA customer's account. Plaintiff is informed and believes that WACHOVIA, despite
16 knowing of BARATTA and TBIG's history of churning, lifted these restrictions on BARATTA and
17 TBIG in late 2004.

18 26. The impact of Defendants' misconduct on Plaintiff's account has been devastating.
19 For example, as of December 31, 2004, Plaintiff's investment account at WACHOVIA had total net
20 assets of \$1,151,790, with stocks and options valued at \$230,452 (excluding preferred stocks, and
21 mutual fund investments), and the majority invested in fixed income securities. By December 31,
22 2006, Plaintiff's account had total net assets of \$368,271, with unrealized losses on stocks and
23 options of \$196,801. By July 2007, when Plaintiff closed her account with WACHOVIA, her
24 portfolio had less than \$315,000 in assets (after deducting the margin debt and losses on her options
25 positions).

26 27. Plaintiff's first hint that anything was wrong with her account and that Defendants'
27 handling of her investments had been improper, came in July 2006, when she received a letter from
28 a Senior Vice President of WACHOVIA. This letter, which was dated July 13, 2006, advised

1 Plaintiff that the market value of her account was \$319,491 that her account had incurred
2 "significant trading losses in 2005 and 2006," and that BARATTA had been employing "extremely
3 risky" uncovered options trading strategies in her account. The letter asked Plaintiff to sign a
4 statement acknowledging that she was aware of this information and had approved of the strategies
5 employed by BARATTA. Plaintiff has been informed and believes that WACHOVIA sent this
6 letter to her because its compliance department had become concerned about BARATTA's and
7 WIELAND's handling of Plaintiff's and other customers accounts WACHOVIA, and had
8 undertaken a review of all of such accounts.

9 28. Upon receipt of this letter, Plaintiff called BARATTA, her friend of many years. Far
10 from admitting that he had employed "risky" trading strategies that had decimated her life savings,
11 BARATTA dismissed the truth of letter's allegations by telling Plaintiff that WACHOVIA was
12 "just trying to get you" to sue him, and that the losses only existed on paper and did not matter if
13 she kept her funds invested in the market for the long-term.

FIRST CAUSE OF ACTION
[Fraud Against All Defendants]

16 29. Plaintiff hereby incorporates the allegations set forth in Paragraphs 1 through 28 as
17 though fully alleged herein.

18 30. TBIG, BARATTA, WIELAND and WACHOVIA made repeated false
19 representations to, and concealed material information from, Plaintiff when Defendants

23 (b) failed to disclose to Plaintiff that many of the trades in her account were financed using
24 "borrowed" funds (via the margin account) that magnified the risks and substantial costs involved
25 in using a margin account to effect such trades (as described in paragraph 16 above):

26 (c) failed to disclose that Defendants had ignored Plaintiff's express instructions to invest no
27 more than \$100,000 (11 percent) of her funds in the stock market, and had invested much more than
28 that amount in stocks and options (as described in paragraph 18 above);

1 (d) failed to disclose that the trading in Plaintiff's account, especially during 2005 and 2006,
2 was excessive, given her conservative investment goals, financial circumstances, and low risk
3 tolerance, and the substantial transaction costs involved in trading her account so frequently, and
4 that WACHOVIA had placed restrictions on BARATTA and TBIG during 2002, because of prior
5 acts of churning (as described in paragraphs 20 through 22 above);

6 (e) failed to disclose TBIG and BARATTA's receipt of "soft dollars" from WACHOVIA
7 resulting from the trades in her account, and the conflict of interest that this created (as described in
8 paragraphs 23 through 25 above); and

9 (f) misrepresented the nature of BARATTA and TBIG's conduct and mislead Plaintiff by
10 BARATTA's urging of Plaintiff to ignore the letter from WACHOVIA about Defendants' risky
11 trading strategy and losses in her account (as described in Paragraphs 27 and 28 above)

12 31. Defendants knew that these representations were false at the time the representations
13 were made, or Defendants recklessly disregarded the truth or falsity of the statements. Defendants
14 further knew that they were withholding material facts from Plaintiff regarding her account.
15 Defendants made these representations, and withheld material facts, so that Plaintiff would continue
16 to keep her funds invested with Defendants, permitting them to continue their trading activity, and
17 otherwise to defraud Plaintiffs as set out herein.

18 32. Plaintiff did not know the representations were false when they were made, and did
19 not know of the material information concealed from her regarding her account, and justifiably and
20 reasonably relied upon these representations by, among other things, transferring \$900,000 to
21 WACHOVIA, maintaining these funds at WACHOVIA from November 2001 until July 2007.

22 33. Plaintiff was not aware that Defendants' representations were false when they were
23 made to Plaintiffs, nor was Plaintiff aware that material information concerning her account, TBIG
24 and BARATTA, and TBIG/BARATTA's relationship with WACHOVIA was being concealed
25 from her. Had Plaintiffs been aware of the true facts, Plaintiff's would have closed her account at
26 WACHOVIA before she incurred the substantial losses that she did during 2005 and 2006.

27 34. As a direct and proximate result of Defendants' misrepresentations, failures to
28 disclose, and concealment of facts, Plaintiffs have suffered damages in an amount which will be

1 proven at trial, but in excess of \$700,000.00.

2 35. In doing the above acts, Defendants, and each of them, acted with malice, fraud,
3 oppression, or in conscious disregard of the rights of Plaintiff, thereby entitling Plaintiff to an award
4 of exemplary and punitive damages.

5
6 **SECOND CAUSE OF ACTION**
7 **(Breach of Fiduciary Duty)**
(Against All Defendants)

8 36. Plaintiff incorporates the allegations set forth in Paragraphs 1 through 35 as though
9 fully alleged herein.

10 37. Based on the relationship which developed between Plaintiff, on the one hand, and
11 TBIG, BARATTA, WACHOVIA, and WIELAND, on the other hand (as described above), each
12 Defendant owed Plaintiff the duties of a fiduciary, including, but not limited to, the following:

13 a) The duty to deal fairly and honestly with Plaintiff, to act with the highest good faith
14 toward Plaintiffs and to put Plaintiffs' interests over their own;

15 b) The duty to manage Plaintiff's accounts in the best interest of Plaintiff;

16 c) To only recommend to Plaintiff the purchase of suitable investments for Plaintiff;

17 d) To only purchase investments, and otherwise use Plaintiff's funds, as authorized by
18 Plaintiff;

19 e) To trade Plaintiff's account in a manner that is reasonable and appropriate in light of
20 Plaintiff's conservative investment goals, financial circumstances, and low risk tolerance;

21 f) To inform Plaintiff of all material facts regarding the investments that TBIG and
22 BARATTA purchased for Plaintiff;

23 g) To tell Plaintiff if TBIG, BARATTA, WACHOVIA, or WIELAND believed
24 Plaintiff, or any of the Defendants, may be taking actions which may be hazardous or extremely
25 risky to Plaintiff; and

26 h) To disclose all material conflicts of interest which exist in their relationship with
27 Plaintiff.

28 38. TBIG, BARATTA, WACHOVIA, and WIELAND breached their fiduciary duty to

Plaintiff by, among other things:

- a) Failing to deal fairly and honestly with Plaintiff, and not acting in good faith or placing Plaintiff's interests above their own;
- b) Failing to manage Plaintiff's money in the best interest of Plaintiff;
- c) Recommending and purchasing investments for Plaintiff which were unsuitable for Plaintiff;
- d) Failing to disclose material facts regarding the churning of Plaintiff's account, the margin debt, the risky and unsuitable nature of the stocks and options that TBIG and BARATTA were purchasing for Plaintiff's account, the soft dollars that WACHOVIA paid to TBIG and BARATTA, TBIG and BARATTA's prior excessive trading of other customers' accounts and the restrictions WACHOVIA placed on TBIG and BARATTA during 2002 because of this improper trading, and not expressly warning Plaintiff that TBIG and BARATTA were exceeding her express instructions to invest her funds conservatively and not to invest more than \$100,000 of such funds in the stock market; and
- e) Churning Plaintiff's account by engaging in securities trading that was excessive light of Plaintiff's assets, conservative investment goals, financial circumstances and low risk tolerance, and the substantial transactions costs involved with such trading.

39. As a direct and proximate result of TBIG's, BARATTA's, WACHOVIA's and WIELAND's breaches of their fiduciary duties to Plaintiff, Plaintiff has suffered damages in an amount greater than \$700,000.00. Because of Defendants' callousness toward their client, and wanton disregard for Plaintiff's rights and welfare, and in that Defendants' actions rose to the level of fraud, Plaintiff requests an award of exemplary and punitive damages against each Defendant.

**THIRD CAUSE OF ACTION
(Breach of Oral Contract)
(Against Defendants TBIG and BARATTA)**

40. Plaintiff hereby incorporates the allegations set forth in Paragraphs 1 through 39 as though fully alleged herein.

41. As set out above, Plaintiff orally agreed to invest \$900,000 she received from the

1 death benefit from her late husband's insurance policy with BARATTA and TBIG. In exchange,
2 TBIG and BARATTA agreed to invest her funds. As part of this agreement, TBIG/BARATTA
3 agreed that Plaintiff's funds would be invested in safe low risk investments, with no more than
4 \$100,000 invested in stock market, and in a manner that was suitable for her, given her aversion to
5 risk and her financial situation.

6 42. Plaintiff has performed all conditions, covenants and promises required by her on
7 her part to be performed in accordance with the terms and conditions of the agreement.

8 43. TBIG and BARATTA breached the agreement by, among other things, investing
9 more than \$100,000 in the stock market, making highly risky, unsuitable investments for Plaintiff,
10 causing Plaintiff's account to accrue significant margin liabilities and to incur significant
11 commissions, and excessively trading Plaintiff's account.

12 44. As a result of TBIG and BARATTA's breaches of the oral agreement, Plaintiff has
13 suffered damages, as she has lost most of her capital, and has further suffered consequential
14 damages related to not receiving the investment return that a prudent investment manager would
15 have earned for her.

16 **FOURTH CAUSE OF ACTION**
(Negligence)
(Against All Defendants)

17 45. Plaintiff hereby incorporates the allegations set forth in Paragraphs 1 through 44 as
18 though fully alleged herein.

19 46. TBIG and BARATTA owed Plaintiff a duty to invest her funds properly, in
20 accordance with the practices that a reasonably prudent investment adviser would employ in
21 handling the investments of a client with similar investment objectives and in similar financial
22 circumstances.

23 47. As her stock broker, WACHOVIA and WIELAND owed Plaintiff a duty of care that
24 obligated them to insure that Plaintiff's funds were invested properly, in investments that were
25 suitable for her, and generally to follow practices that a reasonable stock broker would follow with
26 respect to like clients in her circumstances with similar investment objectives.

27 48. TBIG and BARATTA breached their duty of care toward Plaintiff by making highly
28

1 risky trades with her funds, and by causing her account to incur substantial commission charges and
2 interest costs from the excessive trading and margin debt.

3 49. WACHOVIA and WIELAND breached their duty of care toward Plaintiff by
4 executing the improper trades for TBIG and BARATTA, without advising Plaintiff of the
5 unsuitable nature of these trades for her, the substantial risks involved with these trades, and the
6 substantial commission and interest charges her account would incur due to the excessive trading
7 and margin debt.

8 50. As a result of each Defendant's negligent conduct, Plaintiff has sustained damages,
9 in an amount to proven at trial.

10 51. It was foreseeable that Plaintiff would suffer the type of damages she has suffered as
11 a result of the failure of each Defendant to act as a reasonably prudent investment professional with
12 respect to Plaintiff's account, and each Defendant's actions and omissions were the legal and
13 proximate cause of Plaintiff's damages.

14

15 FIFTH CAUSE OF ACTION
(Violations of California Corporations Code Sections 25,400 et seq.)
16 (Against All Defendants)

17 52. Plaintiff hereby incorporates the allegations set forth in Paragraphs 1 through 51
above as though fully alleged herein.

18 53. By TBIG, BARATTA, WACHOVIA, and WIELAND's acts and omissions, as set
19 forth above, each defendant violated California Corporations Code Sections 25,400 et seq. in that
20 Defendants induced Plaintiff to purchase fraudulent investments by means of written or oral
21 communications containing false or misleading statements or omissions.

22 54. As a consequence of Defendants' violations of Corporations Code Sections 25,400
23 et seq. as alleged herein, Plaintiff has been damaged in an amount to be proven at trial, but no less
24 than the sum of \$700,000.00.

25 55. In violating California Corporations Code Sections 25,400 et seq., Defendants have
26 acted with fraud, oppression, and malice, and evidenced a conscious disregard of Plaintiff's rights,
27 whereby Plaintiff is entitled to an award of punitive and exemplary damages according to proof at
28

the time of trial.

SIXTH CAUSE OF ACTION
(Violation of California Business & Professions Code
Section 17200, et seq.)
(Against All Defendants)

56. Plaintiff hereby incorporates the allegations set forth in Paragraphs 1 through 55 above as though fully alleged herein.

57. The acts of BARATTA, TBIG, WACHOVIA and WIELAND alleged in Paragraphs 1 through 55 above were unlawful, unfair and/or fraudulent business acts or practices as defined in California Business & Professions Code Section 17200 et seq.

58. As a direct, proximate and foreseeable result of Defendants' conduct, Plaintiff has been harmed as set forth herein.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

As to the First, Second, and Fifth Cause of Action:

- 1) For general damages according to proof at the time of trial.
- 2) For interest on Plaintiff's capital from the dates of loss.
- 3) For exemplary and punitive damages according to proof at the time of trial.
- 4) For costs of suit herein incurred.
- 5) For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action:

- 1) For general damages according to proof at the time of trial.
- 2) For interest on Plaintiffs' capital from the dates of loss.
- 3) For consequential economic losses according to proof at the time of trial.
- 4) For costs of suit herein incurred.
- 5) For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action:

- 1) For actual damages in an amount according to proof;
- 2) For prejudgment interest;
- 3) For costs of suit incurred herein; and,

1 4) For such other and further relief as the Court may deem just and proper.

2 As to the Sixth Cause of Action:

3 1) For any order or judgment as may be necessary to prevent the use of the practices
4 alleged herein which constitute unfair competition.

5 2) For any order or judgment as may be necessary to restore to Plaintiff any money or
6 property which may have been acquired by means of such unfair competition.

7 3) For attorney's fees as provided by California Business & Professions Code section
8 17200 et seq.; and

9 4) For such other and further relief as the Court may deem just and proper.

Dated: July 13, 2007

COOKE KOBRICK & WU LLP

By

CHRISTOPHER COOKE

Attorneys for Plaintiff
VIOLETTA ETTARE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)

Christopher Cooke (SBN 142342)
COOKE KOBRECK & WU LLP
 177 Bovet Road, Suite 600, San Mateo, CA 94402
 TELEPHONE NO.: (650) 638-2370 FAX NO.: (650) 341-1395
 ATTORNEY FOR (Name): Plaintiff Violetta Ettare

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara
 STREET ADDRESS: 191 North First Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Jose, CA 95113
 BRANCH NAME: DowntownCASE NAME:
 Ettare v. Baratta, et al.

CM-010

FOR COURT USE ONLY

10/29/07 P 13:13

Trang Vu

CASE NUMBER
107CV089814JUDGE
 DEPT-

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

Eminent domain/inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation
 (Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Six

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 10/29/07

Christopher Cooke
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties In Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

Auto Tort

Auto (22)—Personal Injury/Property

Damage/Wrongful Death

Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death)****Tort**

Asbestos (04)

Asbestos Property Damage

Asbestos Personal Injury/

Wrongful Death

Product Liability (*not asbestos or toxic/environmental*) (24)

Medical Malpractice (45)

Medical Malpractice—

Physicians & Surgeons

Other Professional Health Care

Malpractice

Other PI/PD/WD (23)Premises Liability (*e.g., slip and fall*)Intentional Bodily Injury/PD/WD (*e.g., assault, vandalism*)

Intentional Infliction of Emotional Distress

Negligent Infliction of Emotional Distress

Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)

Civil Rights (*e.g., discrimination, false arrest*) (*not civil harassment*) (08)Defamation (*e.g., slander, libel*) (13)

Fraud (16)

Intellectual Property (19)

Professional Negligence (25)

Legal Malpractice

Other Professional Malpractice (*not medical or legal*)

Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)

Other Employment (15)

CASE TYPES AND EXAMPLES

Contract

Breach of Contract/Warranty (06)

Breach of Rental/Lease

Contract (*not unlawful detainer or wrongful eviction*)

Contract/Warranty Breach—Seller

Plaintiff (*not fraud or negligence*)

Negligent Breach of Contract/

Warranty

Other Breach of Contract/Warranty

Collections (e.g., money owed, open book accounts) (08)

Collection Case—Seller Plaintiff

Other Promissory Note/Collections Case

Insurance Coverage (*not provisionally complex*) (18)

Auto Subrogation

Other Coverage

Other Contract (37)

Contractual Fraud

Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)

Wrongful Eviction (33)

Other Real Property (*e.g., quiet title*) (26)

Writ of Possession of Real Property

Mortgage Foreclosure

Quiet Title

Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)**Unlawful Detainer**

Commercial (31)

Residential (32)

Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)**Judicial Review**

Asset Forfeiture (05)

Petition Re: Arbitration Award (11)

Writ of Mandate (02)

Writ—Administrative Mandamus

Writ—Mandamus on Limited Court

Case Matter

Writ—Other Limited Court Case

Review

Other Judicial Review (39)

Review of Health Officer Order

Notice of Appeal—Labor

Commissioner Appeals

Provisionally Complex Civil Litigation (Cat. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)

Construction Defect (10)

Claims Involving Mass Tort (40)

Securities Litigation (28)

Environmental/Toxic Tort (30)

Insurance Coverage Claims

(arising from provisionally complex case type listed above) (41)**Enforcement of Judgment**

Enforcement of Judgment (20)

Abstract of Judgment (Out of County)

Confession of Judgment (*non-domestic relations*)

Sister State Judgment

Administrative Agency Award (*not unpaid taxes*)

Petition/Certification of Entry of Judgment on Unpaid Taxes

Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)

Other Complaint (*not specified above*) (42)

Declaratory Relief Only

Injunctive Relief Only (*non-harassment*)

Mechanics Lien

Other Commercial Complaint Case (*non-tort/non-complex*)Other Civil Complaint (*non-tort/non-complex*)**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)

Other Petition (*not specified above*) (43)

Civil Harassment

Workplace Violence

Elder/Dependent Adult Abuse

Election Contest

Petition for Name Change

Petition for Relief From Late Claim

Other Civil Petition

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

ATTACHMENT A
CASE NUMBER: 107CV089814

READ THIS ENTIRE FORM

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet, and a copy of this Civil Lawsuit Notice, and you must file written proof of such service.

DEFENDANTS (the person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the Complaint, in the clerk's office of the Court, within 30 days of the date the Summons and Complaint were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: www.sccsuperiorcourt.org/civil/rule1toc.htm
- Rose Printing, 49 N. First St., San Jose (408-293-8177)

For other local information, visit the Court's Self-Service website www.scselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a Case Management Statement (Judicial Council form CM-110) at least 15 calendar days before the CMC. You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Joseph Huber

DEPT: 8

The first CMC is scheduled as follows: (Completed by Clerk of Court)

Date: 11/20/07 Time: 1:30 PM Dept.: 8

The next CMC is scheduled as follows: (Completed by party if the first CMC was continued or has passed)

Date: Time: Dept.:

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed ADR Stipulation Form (local form CV-500B) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2156) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What Is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- < Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.
- < Mediation may be appropriate when:
 - < The parties want a non-adversary procedure
 - < The parties have a continuing business or personal relationship
 - < Communication problems are interfering with a resolution
 - < There is an emotional element involved
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief

-OVER-

- < Arbitration is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, is desired
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

- < Neutral evaluation is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief
- < Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

- < Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; and sports, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

STEPHEN S. WU (SBN 202091)
COOKE KOBRECK & WU LLP
177 Bovet Road, Suite 600
San Mateo, CA 94402
Telephone: 650-638-2370
Attorney for: Plaintiff

FOR COURT USE ONLY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

Plaintiff : VIOLETTA ETTARE

Defendant : JOSEPH E. BARATTA etc., et al.

F I L E D ^{U/C/S}
AUG 13 2007

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY G. RUHNER/PA
DEPUTY

Ref#: 218839 PROOF OF SERVICE OF SUMMONS

Case No.: 107CV089814

1. At the time of service I was at least eighteen years of age and not a party to this action.
2. I served copies of:
SUMMONS; COMPLAINT; CIVIL CASE COVER SHEET; CIVIL LAWSUIT NOTICE; ADR INFORMATION SHEET

3. a. Party served : MARK WIELAND

4. Address where the party was served:

Morgan Stanley
100 Front Street
Conshohocken, PA 19428

PROOF OF SERVICE OF SUMMONS

EXHIBIT "C"

FILED

AUG 13 2007

KIRI TORRE
 Chief Executive Officer/Clerk
 Superior Court of CA County of Santa Clara
 BY *[Signature]* DEPUTY
C. FUJIHARA

5. I served the party

- b. by substituted service. On: July 31, 2007 at: 3:30 PM I left the documents listed in item 2 with or in the presence of:
"JAMES "DOW", 51 YRS, 5'4", BRN HAIR, GLASSES, PERSON APPARENTLY IN CHARGE OF BUSINESS AT TIME OF SERVICE
(1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
- (4) A declaration of mailing is attached.

(5) I attach a declaration of diligence stating actions taken first to attempt personal service.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant

7. Person who served papers:

- a. DONALD DOUCHEARTY
- b. SPECIALIZED LEGAL SERVICES, INC.
1112 Bryant Street, Suite 200
San Francisco, CA 94103
- c. Telephone number: (415) 357-0500
- d. The fee for service was: \$195.00
- e. I am:
(1) not a registered California process server

Sworn to and subscribed before me
this 2nd day of July 2007

8. I declare under penalty of perjury under the laws of the State of California
COMMONWEALTH OF PENNSYLVANIA
that the foregoing is true and correct.

NOTARIAL SEAL
VICTOR G. FINNEGAN, Notary Public City of Philadelphia, Phila. County My Commission Expires April 17, 2011

Date: August 1, 2007

DONALD DOUCHEARTY

218639

MOS-010 Rev. January 1, 2007

PROOF OF SERVICE OF SUMMONS

** TOTAL PAGE. 04 **

FILED

AUG 13 2007

G. FINNEGAN
SANTA CLARAKIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY DEPUTY

STEPHEN S. WU (SRN 202091)
 COONEY KOBRECK & WU LLP
 177 Bovet Road, Suite 600
 San Mateo, CA 94402
 Telephone: 650 638-2370
 Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF SANTA CLARA

Plaintiff : VIOLETTA BETTARE

Defendant : JOSEPH M. BARATTA etc., et al.

Reff: 210839 DECLARATION RE DILIGENCE

Case No.: 107CV089014

I am and was on the dates herein mentioned, over the age of eighteen and not a party to the within action. My business address is: 1112 Bryant Street, Suite 200, San Francisco, CA 94103. I received the within process on July 26, 2007 and after due and diligent effort I have been unable to effect personal service on the within named: MARK WIKLAND

Residence address (R) : UNKNOWN

Business address (B) : 100 Front Street, Conshohocken, PA 19428

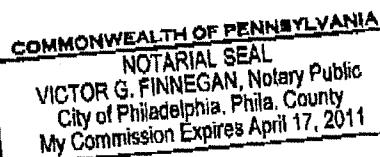
Below is a list of dates, times and details regarding efforts to effect service.

7/27/2007 @ 9:31 AM (R) Not in per employee at time of attempt.

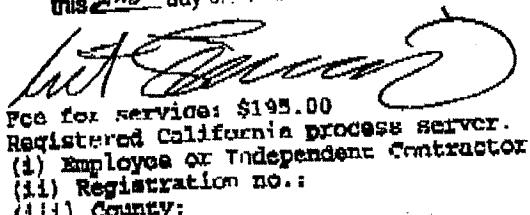
7/30/2007 @ 12:40 PM (B) Not in per employee at time of attempt.

7/31/2007 @ 3:30 PM (B) Effected substitute service per CCP § 415.20(b) "June "Doe", 51 yrs,

5'4", 131 lbs., brown hair, glasses".



Sworn to and subscribed before me
 this 2nd day of July 2007

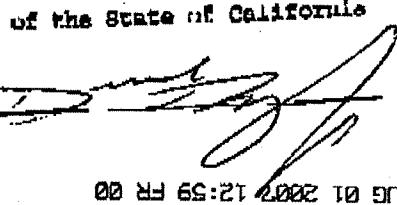


Fees for service: \$195.00
 Registered California Process Server.
 (i) Employee or Independent Contractor
 (ii) Registration no.:
 (iii) County:

Declarant:
 DONALD DOUGHERTY
 SPECIALIZED LEGAL SERVICES
 1112 Bryant Street, Suite 200
 San Francisco, CA 94103
 Telephone: (415) 257-0500

I declare under penalty of perjury under the laws of the State of California
 that the foregoing is true and correct.

Date: August 1, 2007

Signature 

STEPHEN S. WU (SBN 202091)
COOKE KOBRECK & WU LLP
177 Bovet Road, Suite 600
San Mateo, CA 94402
Telephone: 650-638-2370
Attorney for: Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

Plaintiff : VIOLETTA ETTARE

Defendant : JOSEPH E. BARATTA etc., et al.

Ref#: 218839

* DECLARATION OF MAILING * Case No.: 107CV089814

At the time of service I was at least eighteen years of age and not a party to this action and I served copies of the:

SUMMONS; COMPLAINT; CIVIL CASE COVER SHEET; CIVIL LAWSUIT NOTICE; ADR INFORMATION SHEET

FILED

AUG 13 2007

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY G. PLUMHARDY DEPUTY

in the within action by placing true copies thereof in a sealed envelope with first class postage fully prepaid thereon in the United States mail at San Francisco, California , addressed as follows:

MARK WIELAND

Morgan Stanley
100 Front Street
Conshohocken, PA 19428

Date of Mailing: August 1, 2007

Person who served papers:

APRIL JIMENEZ
SPECIALIZED LEGAL SERVICES, INC.
1112 Bryant Street, Suite 200
San Francisco, CA 94103
Telephone: (415) 357-0500

Fee for service: \$195.00

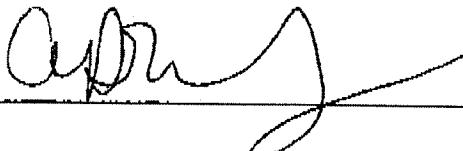
Registered California process server.

- (i) Employee or Independent Contractor
- (ii) Registration no.: 880
- (iii) County: San Francisco

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 1, 2007

Signature



ENDORSED
FILED

1 TERRY ROSS, CASB No. 58171
terry.ross@kyl.com
2 AUDETTE PAUL MORALES, CASB No. 216631
audette.morales@kyl.com
3 KEEBAL, YOUNG & LOGAN
A Professional Corporation
4 400 Oceangate, P.O. Box 1730
Long Beach, California 90801-1730
5 Telephone: (562) 436-2000
Facsimile: (562) 436-7416

7/01 AUG 21 A 11:43

KYL 107CV089814
Clerk
COUNTY OF SANTA CLARA, CALIFORNIA
BY DEPUTY CLERK

6 Attorneys for Defendants
7 WACHOVIA SECURITIES, LLC and MARK WIELAND

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA - UNLIMITED CIVIL JURISDICTION

12 VIOLETTA ETTARE,) Case No. 107CV089814
13 Plaintiff,) Action Filed: July 13, 2007
14 vs.) ASSIGNED FOR ALL PURPOSES TO:
15 JOSEPH E. BARATTA, an individual,) Judge Joseph Huber, Dept. 8
16 TBIG FINANCIAL SERVICES, INC., form) NOTICE TO THE CLERK OF THE
of business unknown,) SUPERIOR COURT OF THE FILING
17 WACHOVIA SECURITIES, LLC, a) OF REMOVAL AND REMOVAL OF
Delaware Limited Liability Company,) ACTION TO FEDERAL COURT
18 MARK WIELAND, an individual, and)
DOES 1-25,)
19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

BY FAX

TO THE CLERK OF THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA:

PLEASE TAKE NOTICE that on August 27, 2007, the Notice of Filing of
Removal and the Notice of Removal attached hereto as Exhibit "A" were filed in the
United States District Court for the Northern District of California in connection with
the above-entitled action.

28 //

1 PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. § 1446(d),
2 the filing of the attached Notice of Removal with the federal court effects removal of this
3 action, and this Court may proceed no further unless and until the case is remanded.

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5 DATED: August 27, 2007

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TERRY ROSS
AUDETTE PAUL MORALES
KEESAL, YOUNG & LOGAN
Attorneys for Defendants
WACHOVIA SECURITIES, LLC and
MARK WIELAND

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Keesal, Young & Logan, 400 Oceangate, P.O. Box 1730, Long Beach, California 90801-1730.

On August 27, 2007, I served the foregoing documents described as **NOTICE TO THE CLERK OF THE SUPERIOR COURT OF THE FILING OF REMOVAL AND REMOVAL OF ACTION TO FEDERAL COURT** on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Christopher Cooke, Esq.
Cooke Kobrick & Wu LLP
177 Boyet Road
Suite 600
San Mateo, CA 94401
Tel: (650) 638-2370
Fax: (650) 341-1395

BY U.S. MAIL: I enclosed the documents in a sealed envelope or package addressed to the above-named persons at the addresses exhibited therewith and (specify one):

I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

20 I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Long Beach, California.

Executed on August 27, 2007 at Long Beach, California.

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

PENNY VINING